II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS

A. The Commission Should Adopt, As An Interim Measure, A "Bill And Keep" Approach To LEC/CMRS Interconnection Agreements

In its comments, Centennial and numerous others urged the Commission to adopt LEC/CMRS interconnection policies, such as a "bill and keep" compensation mechanism, for the exchange of both interstate and intrastate traffic.[39] Centennial argued that this is necessary to ensure, consistent with the Commission's goals, "the continued development of CMRS, especially in competition with LEC provided wireline services."[40] Centennial agreed with the Commission's conclusion that current LEC/CMRS interconnection rules are insufficient to meet this objective.[41] In contrast, the monopoly LECs made various legal and policy arguments that a "bill and keep" compensation system, even on an interim basis, is inappropriate. As discussed below, the LECs' arguments do not withstand scrutiny and vividly demonstrate the mindset of these entrenched monopolists that CMRS providers are merely end users, not full fledged co-carriers.

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[39] Centennial Comments at 8-16; see also CTIA Comments at 6; Vanguard Cellular Systems, Inc. Comments at 15; Western Wireless Corporation Comments at 16.

[40] Notice at ¶2.

[41] Id.

1. "Bill And Keep" Is Consistent With The 1996 Telecommunications Act

In its Supplemental Notice, the Commission asked that the parties consider the impact of the 1996 Act when formulating their comments and reply comments.[42] The legislative history makes it clear that the fundamental purpose of the 1996 Act was to establish a pro-competitive, national policy framework designed to accelerate private sector deployment of advanced telecommunications technologies.[43] As numerous commenters demonstrated, consistent with this purpose, a "bill and keep" compensation system on an interim basis would foster the continued development of existing cellular carriers and spur the rapid deployment of new CMRS services such as PCS.[44] Nevertheless, most LEC commenters ignored Congress' overriding policy objective in concluding that Sections 251 and 252 of the 1996 Act prohibit the Commission from adopting a "bill and keep" compensation mechanism.[45]

The LECs' statutory interpretation is simply incorrect. Sections 251 and 252 of the 1996 Act in no way limit the ability of the Commission to adopt a "bill and keep" mechanism for

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[42] Supplemental Notice at ¶6.

[43] See H.R. Rep. No. 104-458, 104th Cong., 2d Sess. at 113 (1996).

[44] See CTIA Comments at 3-4; see also Cox Comments at 3; Omnipoint Comments at 2.

[45] See e.g. SBC Communications Comments at 9 ("Congress' express language precludes mandated 'bill and keep' arrangements.").

LEC/CMRS interconnection.[46] In fact, the 1996 Act specifically recognizes that "bill and keep" arrangements may be used to satisfy the 1996 Act's mandate for reciprocal compensation for the transport and termination of telecommunications traffic.[47] Section 252(d)(2)(B)(i) of the 1996 Act provides:

> (B) Rules of Construction. - This paragraph shall not be construed-
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> > (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)....[48]

The LECs misread this language in concluding that because Congress' endorsement of "bill and keep" is contained in Section 252(d) (which relates to pricing standards to be employed by State commissions in reviewing interconnection agreements), "bill and keep" arrangements may <u>only</u> be the product of voluntary negotiations between the parties.[49] While Section 252 grants State commissions the authority to review and approve all interconnection agreements, the standards for review are those

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[46]As discussed in detail in Section I of this Reply, the Commission's authority over LEC/CMRS interconnection, established in the 1993 Budget Act, was left undisturbed by the 1996 Act.

[47]<u>See</u> 47 U.S.C. §251(b)(5).

[48]47 U.S.C. §252(d)(2)(B)(i).

[49]<u>See</u> SBC Communications Comments at 8 ("[w]hile the Telecommunications Act specifically <u>permits</u> agreements among interconnecting LECs that waive mutual recovery ... any such arrangement must be the voluntary result of negotiation...."); <u>see also</u> *Ex parte* correspondence from Michael K. Kellogg, Counsel for Bell Atlantic Corporation and Pacific Telesis Group, to William F. Caton, dated Feb. 26, 1996 at 1-2.

set by the Commission pursuant to its Section 251(d) authority (and in accordance with the pricing policies articulated in Section 252).[50] Therefore, Section 252(d)(2)(B) simply makes it clear to a reviewing State commission that "bill and keep" satisfies Section 252(d)(2)(A)'s requirement that each carrier recover costs associated with transporting and terminating traffic that originated on a connecting carrier's network. Neither the plain language of this subsection nor the legislative history of the 1996 Act[51] supports the LEC position that the mutual recovery of costs via a "bill and keep" interconnection compensation mechanism cannot be mandated by the Commission.

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[50] Section 251(d) of the 1996 Act directs the Commission to "establish regulations to implement the requirements of this section," which includes the reciprocal compensation obligations contained in Section 251(b)(5).

[51] Congress explicitly contemplated the use of "bill and keep" as consistent with the 1996 Act. See S. Rep. No. 104-23, 104th Cong., 1st Sess. at 20 (1995) ("... the Committee intends that reciprocal compensation may include compensation arrangements including in-kind exchange of traffic...."); see also H.R. Rep. No. 104-204, 104th Cong., 1st Sess., pt. 1, at 73 (1995) ("... any interconnection agreement entered into must provide for mutual and reciprocal recovery of costs, and may include a range of compensation schemes, such as an in-kind exchange of traffic without cash payment (known as bill-and-keep arrangements.")).

In arguing that Sections 251 and 252 require LECs to negotiate interconnection agreements and thereby precludes Commission adoption of "bill and keep" for LEC/CMRS interconnection, US West states:

> By forcing all LECs and CMRS providers to adopt (and all states to approve) a 'bill and keep' regime, the Commission would destroy the Act's flexibility by denying interconnectors and LECs the ability to vary the terms of their relationship by private agreement.[52]

This overly dramatic statement is misleading and incorrect. "Bill and keep" applies to just one aspect of a LEC/CMRS interconnection agreement, and as proposed by the Commission, for an interim period only. The parties remain free to negotiate all other terms and conditions of interconnection, and will be able to negotiate compensation matters at the conclusion of the "interim" period. Thus, US West's claim that the Act's flexibility will be "destroyed" should be dismissed as empty rhetoric.

2. "Bill And Keep" Is Not A Taking Under The Fifth Amendment

A number of LEC commenters argue that the Commission's proposed "bill and keep" scheme is unconstitutional because it would amount to a taking without just compensation in violation of the Takings Clause of the Fifth Amendment.[53] To sustain this

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[52] US West Comments at 29. (emphasis added.)

[53] Pacific Bell Comments at 84; BellSouth Comments at 18-20; Bell Atlantic Comments at 8-9; US West Comments at 49-53.

claim, a two-prong test must be met. First, it must be established that a "taking" has occurred. Second, it must be established that the "taking" was without "just compensation."[54] Well established case law makes it clear that a "bill and keep" system would not implicate either prong of this test.

In Penn Central Transportation Co. v. New York City, the Court acknowledged the absence of a bright line test for determining whether a taking has occurred.[55] Nevertheless, the Court identified several factors that have particular significance when evaluating whether a government regulation amounts to a taking. These factors include:

(1) the economic impact of the regulation;
(2) the extent to which the regulation has interfered with distinct investment-backed expectations; and
(3) the character of the government action.[56]

Despite claims to the contrary, the economic impact of a temporary "bill and keep" system would be *de minimis.* Annual operating revenues for the LECs have been estimated at nearly $93 billion per year.[57] In comparison, it has been estimated that CMRS carriers pay between $800 million and $1.1 billion annually

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[54] See U.S. Const. amend. V.

[55] 438 U.S. 104, 123-124 (1978) ("... this Court, quite simply, has been unable to develop any "set formula" for determining when "justice and fairness" require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons.").

[56] Id. at 126-127.

[57] See Statistics of Communications Common Carriers, 1993/1994 edition, p.42, Table 2.9, line 190.

to LECs for interconnection.[58] This is approximately 1.2% of total LEC revenues. Although the LECs would have the Commission believe that this lost revenue would have disastrous consequences, this claim is simply not credible.

It is true, as Pacific Bell points out, that a statute or regulation may so frustrate distinct investment-backed expectations as to amount to a taking.[59] This was the case in Pennsylvania Coal Co. v. Mahon, where the Court was faced with the question of whether a state statute imposing certain limitations and restrictions on mining would "destroy" rights previously held by the Pennsylvania Coal Company.[60] In holding that a taking had occurred, the Court stated:

> To make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it. This [is what] the statute does.[61]

In stark contrast, the loss that the LECs claim would result from the adoption of a "bill and keep" system falls far short of the mark set in Penn Coal. The LECs ability to provide telephone services is in no way "destroyed" (or even impaired for that

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[58] See USTA Comments at Attachment 1, p. 11 (relying in part on CTIA, Fact Sheet Reciprocal Termination -- accompanying a December 15, 1995 press release); see also Cox Comments at 13.

[59] See Pacific Bell Comments at 85.

[60] 260 U.S. 393 (1922).

[61] Id. at 415-416. Pennsylvania Coal has been recognized as the leading case for the proposition that a statute may so frustrate investor expectations as to constitute a taking. See Penn Central, 438 US at 127.

matter) and it is simply absurd to think that the temporary absence of CMRS interconnection fees would frustrate to any cognizable degree the "distinct" expectations of LEC investors.[62]

Evaluating the third factor, the "character" of the government action, also leads to the conclusion that no taking would occur from the implementation of a "bill and keep" system. As Pacific Bell readily admits, the government action at issue here does not involve a physical invasion which would result in a "per se" taking.[63] Instead, as noted in Penn Central, the Court has "recognized, in a wide variety of contexts, that government may execute laws or programs that adversely affect recognized economic values" without implicating the takings clause.[64] Such is the case here. Nevertheless, Pacific Bell ignores the limited nature of the proposed government action and erroneously argues that "bill and keep" would require LECs to provide others with "free" interconnection. As discussed below, CMRS providers are not receiving "free" interconnection. "Bill and keep" is a system of mutual compensation whereby CMRS providers are compensating LECs by affording them the corresponding ability to

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[62] This is especially true in light of the fact that under mutual compensation principles, LECs are obligated to pay CMRS carriers for LEC-originated traffic, something they are not doing today.

[63] See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

[64] Penn Central, 438 US at 125.

interconnect and terminate LEC-originated traffic on CMRS networks.

Finally, *assuming arguendo* that "bill and keep" would result in a "taking" of LEC property for purposes of a Fifth Amendment analysis, the LECs still do not have a valid claim because the second prong of the test is not satisfied; namely, the LECs cannot claim to be uncompensated.[65] In exchange for being able to terminate CMRS-originated traffic on the LEC networks, CMRS providers will be required to permit LEC-originated traffic to terminate their networks.[66] Thus, each party receives a valuable benefit.[67] While not receiving an actual cash payment from CMRS carriers for terminating traffic, the corresponding

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[65] BellSouth contends that the Commission's "bill and keep" requirement would only pass constitutional muster if the LEC receives just compensation for the deprivation of its property. BellSouth goes on to argue that the "LEC receives not one penny in actual or imputed compensation for terminating CMRS-originated traffic...." BellSouth Comments at 20. BellSouth conveniently ignores the fact that along with the obligation to terminate CMRS-originated traffic, the LEC gets the corresponding right to terminate LEC-originated traffic on the CMRS network also at no cost.

[66] See Omnipoint Comments at 4 ("[Bill and keep] provides both carriers with a tangible good -- access to the other's network without cost to the originating carrier -- in exchange for the same right on the connecting carrier's network.").

[67] See Airtouch Comments at 17 ("When a LEC network and CMRS network interconnect, customers on both wireline and wireless networks benefit. Because of the differences in network sizes, each individual customer on the CMRS network generally benefits by a greater amount than does a customer on the LEC network. But while the per-customer network effects are larger on the CMRS network, a much greater number of customers on the LEC network benefit. *A priori*, it is impossible to say which set of subscribers derives the greater aggregate benefit from interconnection.").

right to terminate its own traffic on the CMRS network must be considered "just compensation" for purposes of the Fifth Amendment.

3. Bill And Keep Addresses A Real And Significant Problem

Certain commenters contend that "bill and keep" is a solution to a problem that doesn't exist.[68] In so doing, these commenters argue that (1) the growth of the cellular industry is evidence that current interconnection agreements have not been an impediment to the wireless industry; and (2) the lack of formal complaints demonstrates that CMRS providers have had no problems reaching reasonable interconnection agreements with LECs.[69] These arguments are disingenuous and miss the point.[70] As explained in the Notice, the issue is not whether the LECs' interconnection practices have stopped the cellular industry from expanding, they clearly have not, but whether current interconnection policies do enough to "encourage the development

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[68] See Ameritech Comments at 5; Bell Atlantic Comments at 9; US West Comments at 15.

[69] See Bell Atlantic Comments at 9; BellSouth Comments at 22; US West Comments at 22-23.

[70] For example, Bell Atlantic compares the percentage that cellular subscribership has grown with the percentage that landline subscribership has grown from 1988 through 1994 as evidence that interconnection agreements have not hindered CMRS development. This is an absurd comparison. See Bell Atlantic at 10-11. In 1988, the cellular industry was still in its infancy and a large percentage of subscriber growth could be achieved with a relatively low number of new subscribers. In contrast, it would be impossible to achieve a similar increase with respect to mature landline networks. In short, Bell Atlantic's "evidence" proves nothing but its own flawed logic.

of CMRS, especially in competition with LEC provided wireline service."[71] As noted by CTIA, a "bill and keep" compensation mechanism "would inhibit the LECs from exercising their still substantial market power to extract monopoly profits or to hamper the development of mobile services."[72]

As noted above, it has been estimated that in the aggregate, LECs charge CMRS carriers between $800 million and $1.1 billion annually for interconnection.[73] The cost to the LECs in providing this service is only approximately $400 million.[74] As a result of the inflated interconnection fees charged by the LECs and the LECs' ability to continue to force such terms on existing providers and new entrants, current interconnection policies will have the effect of preventing CMRS providers from reaching their potential as local exchange competitors. For example, as noted by Sprint Spectrum and APC in their joint comments:

> Assuming a typical residential telephone subscriber uses only about 400 minutes per month, the typical interconnection charges alone (approximately 3 cents/minute) to provide this service in PCS would run $12.00 -- an amount similar to the total bill that a subscriber typically would incur on the LEC's network.[75]

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[71] Notice at ¶2.

[72] CTIA Comments at 3-4.

[73] See USTA Comments at Attachment 1, p. 11 (relying in part on CTIA, Fact Sheet Reciprocal Termination -- accompanying a December 15, 1995 press release); see also Cox Comments at 13.

[74] See Cox Comments at 13.

[75] Sprint Spectrum/APC Joint Comments at 12; see also Cox at 15.

Because interconnection charges are only one element of providing service, it would be nearly impossible for CMRS carriers to effectively compete with landline carriers on the basis of price.[76]

Certain commenters have argued that interconnection costs amount to anywhere from 3-8% of a CMRS carriers total cost, and a reduction of this amount in a typical subscriber's bill would not be sufficient to make CMRS competitive with landline service.[77] Two points must be made in response. First, a 3-8% reduction in a typical monthly bill is likely to spur demand for wireless services. This result is entirely consistent with the Commission's goal in this proceeding. Second, the price of wireless services need not be identical to landline services in order for CMRS to be seen as a potential alternative to wireline service in the eyes of the public. Wireless' inherent advantage over landline service, mobility, is more than adequate to justify monthly fees higher than that charged for traditional wireline service. However, for CMRS to be considered a viable alternative, its retail cost of service, while not identical,

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[76] See Cox Comments at 11 ("... reasonable interconnection agreements are essential preconditions to competition ... CMRS providers forced to pay inflated interconnection charges simply will be precluded from offering wireless services at competitive rates.").

[77] See USTA Comments at Attachment 1, p. 12 ("LEC interconnection charges are only a small fraction of CMRS usage prices, approximately 8%."); see also Bell Atlantic Comments at 11 ("Even if Bell Atlantic's interconnection rates were reduced to zero ... and that rate reduction was passed through entirely, CMRS retail rates would only be about 3 percent lower.").

must be closer to that of wireline service. Reducing interconnection charges will help accomplish this, thereby encouraging the development of CMRS, especially in competition with wireline service.[78]

Finally, the claim that no formal complaints have been filed is simply not accurate. As discussed at great length in its Comments, Centennial filed a formal complaint against the Puerto Rico Telephone Company ("PRTC") based on PRTC's continuing failure to negotiate a PCS interconnection agreement in good faith.[79] As documented by Centennial, one of the most contentious issues is interconnection rates.[80] A "bill and keep" requirement would go a long way toward resolving the Centennial/PRTC interconnection dispute, thereby permitting Centennial to deploy its PCS network. As noted by Omnipoint,

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[78] In establishing a mutual scheme, Centennial urges the Commission to also ensure that LECs do not recover costs associated with the termination of CMRS-originated calls in a manner that would create a disincentive for a LEC subscriber to use a CMRS provider's network. Such a result would undermine the pro-competitive objectives of the Notice and the 1996 Act, and negate the ability of CMRS providers to fulfill their promise as viable competitors in the local exchange marketplace.

[79] See Formal Complaint, Centennial Cellular Corp. v. Puerto Rico Telephone Company, File No. E-96-13, filed with the Commission Dec. 1, 1995.

[80] Most recently, Centennial has been informed by PRTC that the interconnection rates it took PRTC months to propose should be disregarded because PRTC now plans to conduct a new cost study and will be developing new rates. Centennial submits this latest twist is yet another in the long line of unlawful tactics PRTC has been employing in order to delay competition.

"[w]ith compensation issues effectively out of the negotiation, the interconnection arrangements can proceed more rapidly."[81]

Even if true, pointing to the lack of formal complaints as "evidence" of the reasonableness of current interconnection agreements is a bogus point.[82] As an initial matter, the monopoly LECs enjoy a vastly superior negotiating position vis-a-vis CMRS carriers.[83] As a new service provider, a CMRS carrier must have access to the PSTN and the monopoly LEC customer base to establish and maintain a viable business. On the other hand, the LEC would suffer no immediate negative business consequences for delaying or denying interconnection to a CMRS provider.[84] In fact, "[g]iven the LEC's natural interest in deferring the entry of competition, any delay resulting from interconnection negotiations is a significant competitive tool for the LECs."[85] Thus, LECs can (and have every incentive to) use their market power to force CMRS providers to accept less than favorable terms and conditions.

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[81]Omnipoint Comments at 2.

[82]See US West Comments at 22-23 ("Complaints have not been filed because current LEC/CMRS interconnection agreements are reasonable.").

[83]See PCIA Comments at 9 ("[The LECs are] "gatekeepers for access to every household. "Bill and keep" will level the playing field.").

[84]This is true even though there is inherent value to LEC customers in having access to anyone, anywhere, from their landline telephones, including wireless subscribers.

[85]Omnipoint Comments at 2.

LECs do not understand the fact that the price for having bottleneck facilities and the accompanying local exchange service market power is that their PSTNs are a federal policy tool to actively promote competition in the local exchange service market. This lack of understanding coupled with their long-held view of themselves as sole providers of local exchange services blinds them to the role of others in making such services ubiquitous. By their very nature, CMRS services make a considerable contribution to the ubiquity of local exchange communications. Thus, the LECs do in fact derive value from interconnecting with CMRS providers.

Because the benefit to the CMRS carrier is more immediate, LECs enjoy a significant negotiating advantage which has allowed them to treat CMRS carriers as end users (*i.e.*, avoiding mutual compensation obligations and imposing rates significantly above cost). The LECs' effort to classify and treat CMRS services as "luxury" or "discretionary" services to be contrasted with the "basic" or "essential" services that they provide only serves to delay the competitive integration of CMRS services into the local exchange fabric. Cellular carriers have been able to grow their businesses under existing interconnection policies (albeit not to their full potential) in the context of a duopoly in the provision of mobile services. However, the advent of increased competition among CMRS providers, and the desire for CMRS carriers to provide a measure of competition to LECs in the provision of local exchange services, warrants a fresh look at LEC/CMRS interconnection arrangements.[86]

B. Implementation Of Compensation Arrangements

1. Negotiations and Tariffing

Centennial strongly asserts that any negotiation and tariffing procedure for LEC/CMRS interconnection must be implemented in a way that promotes local exchange competition. Based on the comments, the Commission must recognize that privately negotiated interconnection agreements, with a measure of Commission intervention and oversight to ensure equality in LEC/CMRS provider bargaining positions, produce the most efficient, pro-competitive results.

While Centennial believes that the Commission's "good faith negotiation" requirement is an appropriate baseline, standing alone, this requirement is too vague to be an effective bargaining standard. What constitutes "good faith" is open to too much interpretation, and LECs and CMRS providers invariably

[86] See Sprint Spectrum/APC Joint Comments at 12-13 ("Cellular expanded despite this inefficient and inequitable system because (a) common carriers traditionally were content to serve a relatively high-end market; (b) the majority of cellular carriers are, in fact, affiliates of local exchange carriers, either in-market or out-of-market, and this had a direct economic stake in perpetuating the interconnection principles that artificially protected their wireline monopolies; and (c) the cellular duopoly and early public acceptance of cellular as a relatively high-cost service did not provide sufficient downward price pressure to penetrate the residential market, or even to provide incentives for carriers to combat interconnection costs to lower prices in competition with an opposing cellular provider. With the introduction of a third, fourth, fifth and even more CMRS competitors in local markets, those days are over.")

have different views as to what that term means.[87] As discussed at length in the comments, the LECs simply have too much leverage over CMRS providers to allow them to impose their understanding of "good faith" upon such negotiations.[88] Therefore, Centennial agrees with commenters who state that a "good faith negotiation" standard alone is unlikely in and of itself to produce optimal compensation arrangements from purely private negotiations.[89]

Centennial therefore agrees with commenters who suggest that the Commission can reduce the prospect for LEC abuse by establishing specific negotiation procedures.[90] Centennial proposes that the Commission establish a limited time period, for example 90 days, for voluntary negotiation commencing with a LEC's receipt of a request for interconnection by a CMRS provider. If, at the end of the voluntary negotiation period, the parties have not reached an agreement, either party should be able to file a request for Commission arbitration.[91] These

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[87] For a detailed description of LEC failure to negotiate in "good faith" see Centennial Comments at 28-53.

[88] See Teleport Comments at 22-23; PCIA Comments at 12; Sprint Spectrum/APC Joint Comments at 34; Pacific Bell Comments at 87-90; AirTouch Comments at 40-41; Western Radio Services Comments at 4.

[89] Id.

[90] See Teleport Comments at 23; and Airtouch Comments at 40-41.

[91] As Centennial outlined in its Comments, the request for arbitration should specify the issues upon which agreement has not been reached and that party's position with respect to such issues. If interconnection compensation is among the issues listed in the request, the non-filing party would be required to submit to the Commission the cost justification for its proposed

negotiation procedures would allow the parties an opportunity to reach an interconnection agreement through private negotiation, with specific direction from the Commission only on those issues where the parties cannot reach agreement. Moreover, these procedures would come into effect only if the parties fail to reach an agreement within a set time period of time, and Commission, rather than state involvement, would avoid a patchwork of inconsistent regulation for an acknowledged national service.

Centennial further agrees with the vast majority of commenters who assert that any successfully negotiated agreements should be publicly filed.[92] Knowledge of the terms of other agreements reduces the overwhelming bargaining power of the LEC, and promotes "good faith" negotiations on all sides. Centennial believes public filing is not burdensome to either party, and is preferable to the suggestion of certain commenters that LECs be

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rates, along with any appropriate request for confidential treatment, as part of its response to the request. The response would also contain the responding party's position with respect to the issues listed in the request. The requesting party would be entitled to a reply.

[92] See AT&T Comments at 18; Sprint Spectrum/APC Joint Comments at 34; Bell Atlantic and NYNEX Mobile Comments at 16-17; PCIA Comments at 12-14; ACTA Comments at 8; CellPage Comments at 9; Westlink Comments at 17-18; LDDS Comments at 17; Rural Cellular Corp. Comments at 11; Vanguard Comments at 22; New Par Comments at 21; GSA Comments at 10-11; Western Wireless Comments at 17-18; NYDPS Comments at 12; Western Radio Services Comments at 4-5; Allied Comments at 10-11; 360 Communications Comments at 7; and Cellular Mobile Systems of St. Cloud General Partnership Comments at 13.

required to file tariffs.[93] Centennial applauds USTA's statement that such public disclosure is mandated by the Telecommunications Act of 1996, and therefore each of its members will make their interconnection agreements public.[94]

Centennial also agrees with commenters who note that allowing the LECs to file tariffs only enables them to further exploit their market power.[95] To illustrate, if a LEC is given the ability to file an interconnection tariff, it can claim that there is a presumption of reasonableness to the interconnection rates and condition, and therefore use the tariff to deter real one-on-one negotiations. Accordingly, while Centennial strongly asserts that while negotiated agreements should be publicly available to prevent discrimination between CMRS providers, allowing LECs to file tariffs does not promote parity in LEC/CMRS negotiation, and is wholly inconsistent with the right of CMRS providers to engage in voluntary interconnection negotiations.

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[93] See Rural Cellular Corp. Comments at 11; Vanguard Comments at 22; GSA Comments at 10-11; Western Wireless Comments at 17-18; NYDPS Comments at 12; Western Radio Services Comments at 4-5.

[94] See USTA Comments at 7-8.

[95] See AT&T Comments at 18; Sprint Spectrum/APC Joint Comments at 34; Bell Atlantic and NYNEX Mobile Comments at 16-17; PCIA Comments at 12-14; ACTA Comments at 8; Celpage Comments at 9; Westlink Comments at 17-18; LDDS Comments at 17; New Par Comments at 22; Allied Comments at 10-11; 360 Communications Comments at 7; and Cellular Mobile Systems of St. Cloud General Partnership Comments at 13.

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE, INTEREXCHANGE TRAFFIC

Centennial agrees with the dual approach advocated by PCIA, AirTouch and others for interconnection charges for origination and termination of interstate, interexchange traffic.[96] As these commenters recognize, interconnection arrangements currently fall into two categories. The most common, but certain to become less so as time goes on, involves CMRS/IXC interconnection through transport over LEC facilities. Such a situation involves the payment of access charges directly from the IXC to the LEC, with the CMRS provider left completely out of the picture. Under this scenario, the Commission should craft a solution which allows the CMRS provider to share access charges paid by IXCs to the transporting LEC. Allowing the LEC to retain all such charges is inequitable in that it allows the LEC to retain revenues that theoretically arise from use of the CMRS provider's network. Therefore, to the extent that part of these access charges reflect CMRS facility costs, CMRS providers should be able to share in the payments received by the transporting LEC, and such arrangements should be made publicly available.

On the other hand, direct connection between IXC and CMRS providers, while not currently the industry norm, is becoming a more common arrangement with each passing day. Because neither party in such situations possesses undue market power, Centennial

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[96] See PCIA Comments at 28-29; Airtouch Comments at 56; Vanguard Comments at 27-28; Western Wireless Comments at 22; and Omnipoint Comments at 17.

agrees with commenters who assert that any sort of access charge type payments from IXCs to CMRS providers will be reflected in interconnection agreements privately negotiated between the parties.[97] Because there are many competing providers on both sides of the table willing and able to negotiate fair agreements, and because both parties benefit from such arrangements, neither parties have an incentive or ability to impose a one-sided arrangement on the other. Privately negotiated mutual agreements are sufficient, therefore, in direct CMRS/IXC interconnection scenarios.

IV. CONCLUSION

For the reasons discussed above, Centennial:

* Supports the Commission's tentative conclusion that it has the authority to regulate LEC/CMRS interconnection regardless of the jurisdictional character of the communications;

* Agrees that the Commission should adopt, as an interim measure, a "bill and keep" compensation mechanism for LEC/CMRS interconnection;

* Submits that a "good faith negotiation" standard alone is unlikely in and of itself to produce optimal compensation arrangements from purely private negotiations. Centennial therefore suggests that the Commission reduce the prospect for LEC abuse by establishing specific negotiation procedures; and

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[97] See PCIA Comments at 28-29; Airtouch Comments at 56-57; AT&T Comments at 31; Sprint Comments at 16; APC Comments at 15-16; Vanguard Comments at 27-28; Omnipoint Comments at 17.

* Agrees with commenters who advocate a dual approach for the origination and termination of interstate, interexchange traffic.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert S. Childress, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Reply Comments of Centennial Cellular Corp." was served this 25th day of March, 1996, via first class mail, postage prepaid, upon each of the parties identified on the following pages.

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